

# O'TOOLE SCRIVO

A LIMITED LIABILITY COMPANY

**JAMES DIGIULIO**

[jdigiulio@oslaw.com](mailto:jdigiulio@oslaw.com)

October 24, 2024

**Via CM/ECF**

Hon. Andre M. Espinosa, U.S.M.J.  
United States District Court, District of New Jersey  
Martin Luther King Building & U.S. Courthouse  
50 Walnut Street, Courtroom MLK 2D  
Newark, New Jersey 07101

**Re: *New Wallington Home, LLC, et al. v. Borough of Wallington, et al.***  
**Civil Case No.: 20-08178 (CCC) (AME)**

Dear Judge Espinosa:

This firm represents Plaintiffs in this matter. We write to provide an update following the Court's September 20, 2024, Order and to seek the Court's intervention.

On August 15, 2024, Plaintiffs served six deposition notices for completion of fact depositions within the then deadline of October 4, 2024. On September 20, 2024, following a status conference, the Court So Ordered the Defendants to provide witness availability for deposition dates in October and November by September 27, 2024 [ECF 90]. Moreover, the fact deposition deadline was extended to December 5, 2024.

Pursuant to the discussion at the status conference, on September 24, 2024, Plaintiffs re-issued deposition notices for depositions to commence on October 24, 2024, and continue on October 25, 28, 29, 30 and November 1, 2024. This allowed additional time for depositions, if needed, before the Court ordered deadline, taking into consideration the upcoming holidays.

Thereafter, Plaintiffs' counsel requested confirmation of these dates and witness available on at least two occasions, with no response from Defendants. On October 23, 2024, the undersigned spoke to Defendants' counsel and was informed he has not yet received communication from his client with witness availability. Accordingly, the depositions that have long been scheduled for October 24 and 25 had to be adjourned, and it is likely the remaining scheduled depositions will need to be adjourned without confirmation from Defendants.

Given Defendants' continued lack of response to the deposition notices, Plaintiffs request that: (1) Defendants and other noticed individuals be compelled to appear and provide testimony for the remaining deposition dates noticed the week of October 28 (or on other dates selected by Plaintiffs' counsel if such order is entered thereafter); (2) Defendants be compelled to provide

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dates of availability for Borough Administrator Appice and Councilman Rachelski by no later than October 31, 2024; and (3) order Borough Administrator Appice and Councilman Rachelski to appear for deposition as soon as practicable.

Thank you.

Respectfully submitted,

*/s/ James DiGiulio*

James DiGiulio

cc: All Counsel of Record (via ECF)